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July 2, 2001

Mr. Jeffrey Berg, Acting Director  
Community Development Financial Institutions Fund  
U.S. Department of the Treasury  
601 13<sup>th</sup> Street, N.W.  
Suite 200, South  
Washington, D.C. 20005

Dear Mr. Berg:

The Enterprise Foundation appreciates this opportunity to comment on the Community Development Financial Institutions (CDFI) Fund's initial Guidance on the New Markets Tax Credit (NMTC).

Enterprise is a national nonprofit community development organization that raises capital and deploys it through community-based groups for affordable housing and economic development initiatives in distressed neighborhoods nationwide. Our subsidiary, the Enterprise Social Investment Corporation (ESIC), has used the Low Income Housing Tax Credit to generate \$3.2 billion of private equity investment to finance more than 70,000 affordable apartments for low-income people. In addition, ESIC has used the Historic Rehabilitation Tax Credit to finance innovative commercial and office redevelopments of abandoned industrial sites.

Enterprise was actively involved in helping develop and advocate for enactment of the NMTC. The Credit is the most promising incentive for economic development in distressed areas in more than 20 years. It is tailor-made to work within the nation's increasingly sophisticated and demonstrably successful system for bringing private capital into parts of the country that were left behind during the recent historic economic expansion. As the economy slows, the Credit becomes an even more important resource. We urge the Treasury Department to publish regulations implementing the Credit this year so low-income neighborhoods, which will be most impacted by sluggish economic growth, will not fall farther behind. We pledge our assistance to the Department in that effort.

As a steering committee member of the New Markets Tax Credit Coalition, Enterprise wholeheartedly endorses the Coalition's comments on the Guidance. This letter reiterates and expands somewhat upon those comments as they relate to issues we believe are particularly important.

## **Community Accountability**

While the statute states that community accountability can be met by having residents serve on “any” governing or advisory board of a community development entity (CDE), the Guidance states that the “accountability requirement may be met if residents of Low-Income Communities are represented on the governing or advisory board of the entity’s managing general partner or other controlling entity.” In addition, the Guidance cites an example of accountability as having low-income people or residents of low-income communities on such a board.

Thus, the Guidance seems to suggest a much more restrictive notion of “accountability” than provided in the statute—or employed by the Fund in its other, related programs. For example, under the CDFI core program, an entity can be certified as a CDFI if it has representatives of the “target market” on its governing board or uses other approaches, such as an advisory board, focus group or community meetings. A CDFI applicant must provide in its application a brief narrative of how it would meet the accountability requirement. We recommend that the Fund apply a similarly flexible accountability test for the NMTC.

As stated above, the Guidance suggests that the regulatory definition of “representative of low-income community” may be limited to people who either are low-income or are residents of a low-income community. We recommend that the definition be expanded to include people whose primary job or activity is serving or working in such areas, such as a pastor, business owner or community development corporation director, who may not be low-income or who may live elsewhere, but is representative of the community and aware of its needs.

Finally, we recommend that a community development entity (CDE) be treated as meeting the “accountability test” if a majority of the CDE’s governing or advisory board (if it chooses to employ such an approach) meets the “representative test.”

## **Documenting Track Record**

We discourage the Fund from developing standard performance criteria for all CDEs, since individual CDE’s will pursue different development goals, depending on whether they are operating a venture fund, a loan fund or using the NMTC to develop a single facility or project. Therefore, we recommend that individual CDEs negotiate a set of performance measures as part of their “Allocation Agreements.” If the Fund believes it lacks the resources and expertise to negotiate individual performance measures with CDEs, it should adopt standard performance criteria for “classes” of CDEs, such as venture capital, lending, real estate etc. and use those criteria solely to establish thresholds for further considering applicants’ subjective merits.

In determining whether an applicant has a successful track record of providing capital or technical assistance to disadvantaged businesses, we recommend that the following factors be considered:

- The total amount of capital provided by the applicant through loans, investments or services to low-income communities or disadvantaged businesses, including nonprofit organizations;

- The number of disadvantaged businesses, including nonprofit organizations, that have received loans, investments or technical assistance from the applicant;
- The overall success rate of the applicant in providing capital to disadvantaged businesses, including nonprofit organizations, or low-income communities, measured in terms of loan loss rates, return on equity and other financial measurements; and
- The ratio that activities providing capital or technical assistance to disadvantaged businesses bears to the overall activities of the applicant.

In addition, we recommend that the Fund pay particular attention to the degree of need and the level of distress in the areas in which the applicant has been active. We believe this criterion is relevant not because all NMTC investments will be or should be in the most distressed communities, but because it reflects an applicant's capacity to execute difficult developments in tough conditions and thus speaks to the applicant's capacity, as well as its public purpose mission.

### **Bank Enterprise Award Prohibition**

The Guidance would disallow a depository institution from receiving a Bank Enterprise Award (BEA) for the provision of financial assistance to a qualified low-income community business using cash derived from NMTC investments. We recommend that this prohibition be dropped from the final Guidance. Both the NMTC and the BEA program are targeted to low-income communities that need significant capital investment. Therefore, we see no reason to prohibit the programs from working together to encourage private investment in low-income community businesses.

### **Evaluation**

The draft Guidance suggests an evaluation process that could be unnecessarily time consuming. While we understand the Fund has a fiduciary responsibility to underwrite NMTC allocations and ensure that CDE applicants are eligible and have the capacity to carry out their proposed "Comprehensive Investment Plans," we encourage the Fund to recognize the market-driven nature of the NMTC program. Once a CDE is certified and secures a NMTC allocation from the Fund, it will need to market the Credit to private investors that will do their own due diligence before investing in the CDE. A CDE will need to pass the scrutiny of both the Fund and its private investors before it can actually utilize the NMTC.

The draft Guidance would require a CDE to supply a Comprehensive Investment Plan that provides historical information and a minimum five-year investment strategy. Upon receiving notice of an allocation, a CDE must then negotiate and finalize its NMTC Allocation Agreement with the Fund. We are concerned that the application, evaluation and final allocation processes will be onerous and could substantially delay the availability of the NMTC to spur new investment. Therefore, we suggest a streamlined application process for CDEs that have previously submitted their Comprehensive Investment Plans to the Fund for one of the other CDFI Fund programs. In such cases, we also suggest that the Fund not conduct a site visit to an applicant if it has conducted one in the recent past.

We recommend that the Fund consider ways to ensure that the time from filing a CDE application to completing an Allocation Agreement be no more than one year.

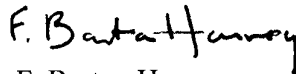
#### **Limitation on Credits**

We recommend that the Fund ensure geographic diversity in NMTC distribution as well as diversity in the types of organizations that will benefit from the Credit. We suggest that allocations be distributed to small local and mid-sized regional CDEs, as well as larger regional and national entities. In addition, we encourage the distribution of Credit allocations to equity funds, debt funds, venture funds, mixed-use funds and single purpose funds.

We believe there should be limits on the amount of a NMTC allocation that may be awarded to any single applicant in a calendar year in order to ensure that the expected benefits of the NMTC program are extended throughout the country to a variety of low-income communities. We recommend that no single applicant be awarded a NMTC allocation in excess of 10 percent of the amount of the allocation available in that year.

We appreciate your consideration of these comments and look forward to working with the Fund to implement this important new incentive.

Sincerely,

A handwritten signature in black ink, reading "F. Barton Harvey". The signature is written in a cursive, slightly stylized font.

F. Barton Harvey  
Chairman of the Board &  
Chief Executive Officer